S.B. CIVIL WRIT PETITION NO.2603/1996
Kulvendra Singh Vs. The State of Raj. & Ors.

Date : 07.05.2007

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA

Mr. V.S. Gehlot for Mr. D.K. Parihar for the petitioner.
Mr. L.R. Upadhyay, Dy. Government Advocate.
None present for the respondent No.5.

Heard learned counsel. No one has appeared for respondent No.5 when the matter was called out.

The writ petition is directed against the order of the Board of Revenue dated 23rd April, 1996 dismissing the appeal filed by the present petitioner against the allotment made on 9.6.1983 in favour of the respondent No.5, Manohar Singh. The petitioner's case was that he was allotted the land in question for temporary cultivation on 17.2.1983 for a period of one year. During the continuance of said lease while he was in possession of the said land the said land could not have been allotted to any one for permanent cultivation apart from any other dispute. These facts are not in dispute.

Apparently, the Board of Revenue notwithstanding the finding in favour of the petitioner on this issue has rejected the appeal because at the time of hearing of the appeal before it renewal of temporary cultivation lease has not taken place.

Suffice it to say that when the land was under temporary cultivation lease for one year since 17.2.1983 and possession of the petitioner and which lease on in its own term was live at least upto 17.2.1984, no allotment of that land during that period could have been made. The S.D.M. had no jurisdiction to allot the land on permanent basis to any one to the detriment of the petitioner's right.

In the facts and circumstances when the land was allotted to respondent No.5, even before the expiry of period of lease, the making of application of renewal would have been futile. The petitioner had taken recourses to remedy against illegal allotment and he could pursue his right towards removal and permanent

allotment on outcome of said litigation.

Accordingly, the writ petition is allowed. The order of Board of Revenue dated 23rd April, 1996 is set aside so also the order of SDM dated 9.6.1983 making allotment in favour of Manohar Singh is set aside. It will be open for the petitioner to make fresh application for renewal / allotment of the said land. If such application is moved, the same shall be decided by the competent authority in accordance with law expeditiously.

[RAJESH BALIA], J.

babulal/